

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MARK POLLNER, M.D.

Plaintiff,

Civil Action No.: 2:13-cv-1881(DRH)(GRB)

-against-

UNITED HEALTHCARE INSURANCE COMPANY  
d/b/a OXFORD HEALTH PLANS, LLC

Defendant.  
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**DECLARATION OF**  
**MICHAEL H. BERNSTEIN**

MICHAEL H. BERNSTEIN, pursuant to 28 U.S.C. §1746(2) declares under penalty of perjury the following:

1. I am a member of the firm of Sedgwick LLP, attorneys for the Defendants, United Healthcare Insurance Company d/b/a Oxford Health Plans, LLC. ("United/Oxford"). As such, I am fully familiar with the facts and circumstances in this matter.

2. I submit this Declaration and the exhibits annexed hereto in support of the United/Oxford's motion for an Order pursuant to Rule 15(a), FED. R. CIV. P., granting United/Oxford leave to amend its Answer to assert a Counterclaim against Plaintiff Mark Pollner, M.D. ("Pollner") pursuant to section 502(a)(3) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, et. seq. ("ERISA") for equitable restitution regarding the amount it overpaid Pollner (i.e. \$17,440) for claims he submitted on behalf of seven (7) of his patients, whose health insurance policies did not provide benefits for services rendered by non-participating providers like Pollner, and for any further relief as this Court may deem just and proper.

3. On or about March 4, 2013, Pollner filed his Complaint against United/Oxford in the Supreme Court of the State of New York, County of Suffolk in which he asserted claims alleging

that United/Oxford failed to pay several claims he submitted on behalf of his patients between May 2012 through December 2012. (Doc. No. 1 at pp. 11-15).

4. United/Oxford removed this matter to this court on the grounds that Pollner's claims arise under employee welfare benefit plans governed by ERISA. (Doc. No. 1).

5. United/Oxford filed a timely Answer to Pollner's Complaint on May 10, 2013, including all of the appropriate affirmative defenses. (Doc. No. 5).

6. Following an initial conference on June 17, 2013, the Honorable Gary R. Brown, U.S.M.J., issued a Scheduling Order in which he ordered that all motions to amend the pleadings be filed by August 9, 2013. (Doc. No. 8). Judge Brown also ordered that all discovery be completed on or before February 24, 2014. (*Id.*).

7. At a Settlement Conference held on July 31, 2013, Judge Brown issued a Civil Conference Minute Order in which he directed the parties produce certain items of discovery. (Doc. No. 9).

8. Pursuant to Judge Brown's Order dated July 31, 2013, United/Oxford sent a letter to Pollner dated August 21, 2013, which enclosed a spreadsheet of all claims at issue in this case. Annexed hereto as **Exhibit "1"** is a true and accurate copy of the letter United/Oxford sent to Pollner's Counsel, with the attachment, on August 21, 2013.

9. On August 28, 2013, Pollner's counsel sent a letter in response to United/Oxford's letter dated August 21, 2013. Annexed hereto as **Exhibit "2"** is a true and accurate copy of Pollner's Counsel's letter dated August 28, 2013.

10. On October 16, 2013, United/Oxford sent Pollner a letter attaching an updated spreadsheet regarding the claims at issue in this matter. Annexed hereto as **Exhibit "3"** is a true and accurate copy of United/Oxford's letter to Pollner's counsel dated October 16, 2013, with the spreadsheet attachment.

11. Following a Settlement Conference held on October 18, 2013, Judge Brown issued a further Civil Conference Minute Order in which he again directed both parties to produce several items of discovery. (Doc. No. 13).

12. Pursuant to Judge Brown's Order date October 18, 2013, United/Oxford served its Document Production in Response to the Directive of the Hon. Gary R. Brown dated December 18, 2013. Annexed hereto as **Ex. "4"** is a true and accurate copy of United/Oxford's "Document Production In Response to the Directive of the Hon. Gary R. Brown dated December 18, 2013," without enclosures.<sup>1</sup>

13. Pollner has not served any discovery demands in this action and has not provided any response to Judge Brown's July 31, 2013 or October 18, 2013 Orders.

14. By letter dated January 24, 2014, United/Oxford requested leave of the Court to file an Amended Answer to assert a counterclaim pursuant to ERISA §502(a)(3) for equitable restitution of the amounts it overpaid Pollner. (Doc. No. 15). Along with the letter, United/Oxford attached its proposed Amended Answer. Attached hereto as **Ex. "5"** is a true and accurate copy of United/Oxford's proposed Amended Answer in this matter.

Dated: April 2, 2014

I declare under penalty of perjury that the foregoing is true and correct.

s/  
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MICHAEL H. BERNSTEIN

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<sup>1</sup> The enclosures are comprised of over 10,000 pages of documents which are not relevant to this application.

**CERTIFICATE OF SERVICE**

I, MICHAEL H. BERNSTEIN, hereby certify and affirm that a true and correct copy of the attached **DECLARATION OF MICHAEL H. BERNSTEIN** was served via ECF and regular mail on the 2<sup>nd</sup> day of April, 2014, upon the following:

Robert A. Santucci  
Attorney for Plaintiffs  
110 Wall Street – 11<sup>th</sup> Floor  
New York, New York 10005-3817

Dated: New York, New York  
April 2, 2014

s/\_\_\_\_\_  
MICHAEL H. BERNSTEIN